

ORIGINAL

FILED

07 OCT 31 AM 9:02

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]*

DEPUTY

1 Lawrence H. Meuers
2 (SBN: 197663)
3 Steven E. Nurenberg
4 FL Bar No. 0808431
5 Steven M. De Falco
6 FL Bar No. 0733571
7 MEUERS LAW FIRM, P.L.
8 5395 Park Central Court
9 Naples, Florida 34109
10 Telephone: (239) 513-9191
11 Facsimile: (239) 513-9677
12 lmeuers@meuerslawfirm.com
13 snurenberg@meuerslawfirm.com
14 sdefalco@meuerslawfirm.com

15 Attorneys for Plaintiff

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**
18 **SAN DIEGO DIVISION**

19 **FORTUNE GROWERS, LLC, a**
20 **Nevada limited liability company,**

21 Plaintiff,

22 vs.

23 **SOUTHERN CITRUS, INC., a**
24 **California corporation; HANA GIBO,**
25 **an individual; and SABAH**
26 **YOUKHANNA, an individual,**

27 **Defendants.**

28 Case No. CV 2088 - *JAH CAB*

29 CERTIFICATION OF COUNSEL
30 AS TO WHY NOTICE SHOULD
31 NOT BE REQUIRED PURSUANT
32 TO RULE 65(b)

33 The undersigned represents Plaintiff, Fortune Growers, LLC ("Fortune
34 Growers") in this action to enforce the trust provisions of the Perishable
35 Agricultural Commodities Act ("PACA"), 7 U.S.C. §499e(c).
36

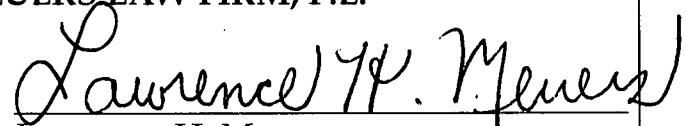
1 Notice of Plaintiff's Motion for an Ex-Parte Temporary Restraining Order
2 should not be required because notice will afford Defendants, Southern Citrus,
3 Inc., Hana Gibo, and Sabah Youkhanna, an opportunity to dissipate trust assets
4 that are required by statute to be held for the benefit of Plaintiff, who is a PACA
5 trust creditor of Defendants. Defendants, Southern Citrus, Inc., Hana Gibo, and
6 Sabah Youkhanna, are under a statutory duty to pay promptly for produce from
7 the trust established by statute. **Defendants have failed to pay.** In addition:
8

- 10 a) Fortune Growers has not been paid for \$115,266.40 worth of
11 produce that it sold to Southern Citrus, Inc. (See ¶24 of the
12 Declaration of Luis Solarte filed contemporaneously herewith
("Solarte Affidavit").
- 13 b) Promised payment has not been received. (¶25, Solarte Affidavit)
- 14 c) Fortune Growers has been forced to call Southern Citrus numerous
15 times in order to secure payment. (¶¶19, 20, Solarte Affidavit)
- 16 d) Calls made to Southern Citrus by Fortune Growers have been
17 avoided from June through August. (¶¶21, 23, Solarte Affidavit)
- 18 e) Southern Citrus' PACA license has been terminated. (¶22, Solarte
19 Affidavit.)

20 Collectively this evidence indicates that Defendants are experiencing
21 serious financial problems. Therefore, advising Defendants of the pendency of
22 this Motion will allow them the opportunity to make payments on non-trust
23 debts with trust assets in order to avoid serious personal liabilities, e.g. criminal
24 liability for failure to pay withholding taxes or civil liabilities. Once the trust
25 assets are dissipated, it is all but impossible to recover them. H.R. Rep. No. 543,
26
27

1 98th Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S. Code & Admin. News 405,
2 411. See also J.R. Brooks & Son, Inc. v. Norman's Country Market, Inc. 98 B.R. 47
3 (Bkrtcy. N.D. Fla. 1989). Entry of an Ex-Parte Temporary Restraining Order
4 guarantees the performance of this statutory duty, and prevents further
5 dissipation pending a hearing, which can be set as soon as possible.
6
7

8 Respectfully submitted this 26th day of October, 2007.

9
10 MEUERS LAW FIRM, P.L.
11
12 By: 
13 Lawrence H. Meuers
14 (SBN: 197663)
15 Steven E. Nurenberg
16 FL Bar No. 0808431
17 Steven M. De Falco
18 FL Bar No. 0733571
19 5395 Park Central Court
20 Naples, Florida 34109
21 Telephone: (239) 513-9191
22 Facsimile: (239) 513-9677
23 lmeuers@meuerslawfirm.com
24 snurenberg@meuerslawfirm.com
25 sdefalco@meuerslawfirm.com
26
27
28

29 Attorneys for Plaintiff